


1 LEONARDO M. RAPADAS
 2 United States Attorney
 3 MIKEL W. SCHWAB
 4 Assistant U.S. Attorney
 5 108 Hernan Cortez Ave.
 6 Sirena Plaza, Ste. 500
 Hagatna, Guam 96910
 Tel: (671) 472-7332
 Fax: (671) 472-7215

7 Attorneys for Plaintiff United States of America

FILED
 DISTRICT COURT OF GUAM
 APR - 2 2007 
 MARY L.M. MORAN
 CLERK OF COURT

8
 9 UNITED STATES DISTRICT COURT
 10 TERRITORY OF GUAM

12 AMERICOPTERS, LLC.,)	CIVIL NO. 03-00005
)	
13 Plaintiff,)	
)	
14 vs.)	MOTION TO SUPPRESS
)	DEPOSITION
15 FEDERAL AVIATION ADMINISTRATION,)	
)	
16 Defendant.)	
17)	

18
 19
 20 The United States hereby asks the Court to Suppress a Notice of Deposition filed by the
 21 Plaintiff (Exhibit A).

22
 23 Plaintiff has requested a deposition prior to the hearing of a Motion filed by the United
 24 States. The Motion of the United States is to dismiss or for transfer to the Court of Claims, which
 25 would have exclusive jurisdiction over such a "Constitutional Takings" case.
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 27
 28

1 When a motion to transfer an action to the Court of Federal Claims is filed in a U.S.
2 District Court, depositions and all such proceedings are stayed until after the U.S. District Court
3 has ruled on the motion. 28 USC Sect. 1292 (d)(4)(B); See also, Lockheed Martin Corp. v.
4 Defense Contract Audit Agency, 397 F. Supp. 2d 659 (D.Md., 2005); Mitchell v. U.S., 930 F.2d
5 893 C.A.Fed (Va), 1991 (“Under 28 U.S.C. §1292(d)(4)(B), the district court shall suspend
6 proceedings until this court’s decision on the jurisdictional appeal.”); Consolidated Edison Co.
7 of New York v. U.S., 54 F.Supp. 2d 364 (S.D.N.Y., 1999)(Denying motion to lift 1292(d)(4)(B)
8 stay to conduct discovery).
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12 The transfer statute requires that the District Court consider the transfer rather than an
13 outright dismissal. In spite of its opportunity to amend the Complaint, Plaintiff has failed to
14 plead the elements of a taking. In the interest of judicial economy, the United States advocates
15 dismissal of the Complaint. Plaintiff’s attempt to use an employee deposition to cover the
16 deficiency does nothing to reverse the failure to plead and it can not overcome the prohibition in
17 Section 1292.
18
19

20 Nothing in a deposition can lead to any evidence that would address the jurisdiction of the
21 U.S. Court of Claims for takings cases. Secondly, an outright dismissal would be most
22 judicious.
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24

25 Were the transfer not at issue, the United States would further request suppression based
26 on the unavailability of the witness at the time demanded. Counsel would need to coordinate a
27 time and place that can be accomplished by the witness, whose duty station is Hawaii.
28

1 For all of the above reasons, the United States requests an Order Suppressing the Notice
2 of Deposition.

3 Submitted this 2nd day of April, 2007.

4
5 LEONARDO M. RAPADAS

6 United States Attorney
7 Districts of Guam and NMI

8
9 BY: 

10 MIKEL W. SCHWAB
11 Assistant U.S. Attorney
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CARLSMITH BALL LLP

DAVID LEDGER
ELYZE J. McDONALD
Bank of Hawaii Bldg., Suite 401
134 West Soledad Avenue, P.O. Box BF
Hagåtña, Guam 96932-5027
Tel No. 671.472.6813

Attorneys for Plaintiff
Americopters, LLC

FILED
DISTRICT COURT OF GUAM
MAR 27 2007
MARY L.M. MORAN
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

AMERICOPTERS, LLC,

Plaintiff,

vs.

FEDERAL AVIATION ADMINISTRATION,

Defendant.

CIVIL CASE NO. CV03-00005

**NOTICE OF DEPOSITION;
DECLARATION OF SERVICE**

**TO: Mr. DONALD HAMILTON
by and through
Mikel W. Schwab
Assistant U.S. Attorney
OFFICE OF THE UNITED STATES ATTORNEY
DISTRICT OF GUAM AND CNMI
108 Hernan Cortez Avenue
Hagåtña, Guam USA 96910
Attorneys for Plaintiff United States of America**

**US Attorney's Office
Districts of Guam & NMI**

MAR 27 2007
Time _____
Receiving name ASB IL/2
Date keyed in Dbase _____
Entered into Dbase by: [Signature]

PLEASE TAKE NOTICE that Plaintiff Americopters, LLC will take the deposition of **DONALD HAMILTON** at the law offices of Carlsmith Ball LLP, ASB Tower, 1001 Bishop Street, Suite 2200, Honolulu, Hawaii 96809-0656, on **Friday, April 6, 2007, at 10:00 a.m.** Mr. Hamilton is employed by the Federal Aviation Administration and has his office at the Flight



Standards District Office in Honolulu, Hawaii.

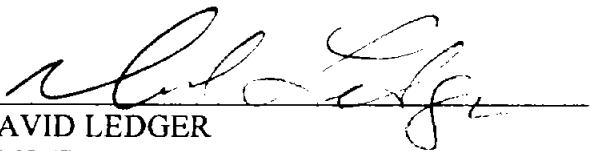
The deposition will be limited in scope. In particular, the subject matter of the questions confined to that information necessary for Americopters to oppose the FAA's recently filed Motion to Dismiss for lack of subject matter jurisdiction in the District Court for Guam.

The deposition will be conducted and recorded pursuant to the Federal Rules of Civil Procedure and the Local Rules for the United States District Court of Guam.

If said deposition is not completed on the date set out above, the taking of the deposition will be continued from day to day thereafter, except for Sundays and holidays, at the same place, until completed.

DATED: Hagåtña, Guam, March 27, 2007.

CARLSMITH BALL LLP



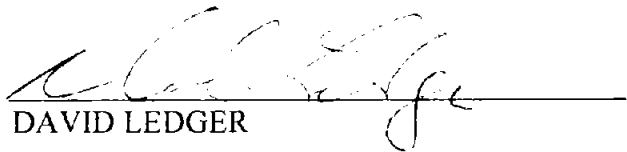
DAVID LEDGER
ELYZE J. McDONALD
Attorneys for Plaintiff
Americopters, LLC

DECLARATION OF SERVICE

I, DAVID LEDGER, hereby declare under penalty of perjury of the laws of the United States, that on March 27, 2007, I will cause to be served, via hand delivery, a true and correct copy of the **NOTICE OF DEPOSITION; DECLARATION OF SERVICE** upon the following Counsel of record:

Mikel W. Schwab
Assistant U.S. Attorney
OFFICE OF THE UNITED STATES ATTORNEY
DISTRICT OF GUAM AND CNMI
108 Hernan Cortez Avenue
Hagåtña, Guam USA 96910
Attorneys for Plaintiff United States of America

Executed this 27th day of March 2007 at Hagåtña, Guam.


DAVID LEDGER

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Carlsmith Ball LLP
Bank of Hawaii Bldg. Ste. 401
134 W. Soledad Ave.
Hagåtña, GU 96910

Marie Chenery
Paralegal
U.S. Attorney's Office
Districts of Guam and the NMI